

CC: OS/OGC  
ORIGINAL  
ALJ(2)  
Pub

RECEIVED

2013 12 16 11:15

FEDERAL MARITIME COMMISSION

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

-----  
TIENSHAN, INC. )  
 )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 )  
 TIANJIN HUA FENG TRANSPORT AGENCY CO., LTD. )  
 )  
 )  
 Respondent. )  
-----

DOCKET NO. 08-04

**VERIFIED COMPLAINT**

Complainant, TIENSHAN, INC. ("TIENSHAN"), by its attorneys, Rodriguez O'Donnell Gonzalez & Williams, P.C., as and for its Verified Complaint against TIANJIN HUA FENG TRANSPORT AGENCY CO., LTD., ("TIANJIN HUA FENG" or "Respondent") pursuant to Section 11(a) of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (the "Act"), 46 U.S.C. app. § 1710(a), and pursuant to the Federal Maritime Commission's ("FMC") authority under Section 17(a) of the Act, 46 U.S.C. app. § 1716(a), alleges upon information and belief the following:

**PARTIES**

1. TIENSHAN is a corporation organized and existing pursuant to the laws of the state of Delaware with its principal place of business at 231 Wilson Avenue, South Norwalk, Connecticut 06854.

2. Upon information and belief and at all times hereinafter mentioned, Respondent Tianjin Hua Feng is a foreign corporation organized and existing pursuant to

the laws of the People's Republic of China, with its principal place of business at Rm. 1002, Bldg A, International Commercial Trade Center, No. 59 Machang Road, Hexi District, Tianjin China. As here relevant and pursuant to 46 C.F.R. § 515.21 et al. and 46 C.F.R. Part 520, Tianjin Hua Feng, with an FMC No. 018117, is legally operating as a duly bonded and tariffed foreign-based Non-Vessel Ocean Common Carrier ("NVOCC") between various locations in the People's Republic of China and various locations in the United States.

3. Upon information and belief, Respondent's legal agent for the service of judicial and administrative process, including subpoenas is Distribution-Publications, Inc. with the address at 180 Grand Avenue, Suite 430, Oakland, California 94612.

4. Upon information and belief, Hua Feng (USA) Logistics Inc. ("Hua Feng USA"), a California corporation, is an affiliate of Respondent. Hua Feng USA is a NVOCC within the meaning of Sections 3(6) and 3(18) of the Act, 46 U.S.C. app. §§ 1702(6) and 1702(18) with an FMC No. 019033N.

5. Although not named as a respondent herein, Complainant reserves the right to name Hua Feng USA, an affiliate of Respondent, as a further Respondent in this proceeding, in that upon information and belief Hua Feng USA may have conspired with Respondent in the wrongful conduct subject of this Complaint.

#### **FACTUAL ALLEGATIONS**

6. In April 2008, Complainant signed a sales contract for the purchase of stoneware from Henan Huatai Ceramic Technology (the "Shipper"), a Chinese company with its principal business place in Henan, China. The price term of this purchase agreement was, among others, FOB Tianjin Port, China.

7. Complainant and the Shipper are not related by common ownership, nor are they under common control.

8. Complainant purchased the goods under the sales contract in order to perform its contracts with Wal-Mart Stores, Inc. ("Wal-Mart"), and other U.S. retailers in the United States.

9. Complainant has paid the full contract price to the Shipper under the sales contract, and the title of the goods has been transferred to Complainant.

10. On or about June 2008, the goods under the sales contract, subject of this Complaint, were loaded on the Vessel CMA CGM Africa Voyage E107 in four containers. The Port of Loading was Xingang, China.

11. On June 3, 2008, China Ocean Shipping Agency as an agent for the Carrier, Wan Hai Lines (Singapore) PTE Ltd. ("Wan Hai"), issued the straight bill of lading No. 0338005421 (the "B/L"), attached hereto as Exhibit A, for the aforementioned cargo with Henan Huatai Ceramic Technology Trading Co., Ltd. as Shipper, and Complainant as Consignee.

12. The cargo arrived at the Port of Discharge, Long Beach, California, on or about the middle of June, 2008.

13. Complainant has paid the full amount of the ocean freight and other charges to Wan Hai.

14. Upon information and belief the Shipper went out of business in the middle of June because of a workers' strike, among other reasons.

15. Respondent acting as a freight forwarder in China on behalf of the Shipper is unlawfully holding the original B/L, subject of this proceeding, by alleging debts in the amount of RMB243,680 owed by the Shipper to Respondent.

16. In an e-mail dated June 19, 2008, Respondent admitted that it was holding the cargo ransom for debts owed by the Shipper. It stated: “[w]e admit the original b/l is in our hand now. Pls note we hold the original b/l just aim at the factory (shipper) because of the outstanding payment. We book for them, we make docs for them, we pay carrier’s local charge for them, but they owe us. How to protect our rights and interests? We sent shipper the formal letter today, which you can find in the attachment, but more regrettable is that shipper told (WAN HAI) they lose the original b/l.....We will send shipper the original b/l when we get the payment.” (See Exhibit B, attached hereto).

17. Neither Respondent nor Hua Feng USA is a party to the pertinent B/L, subject of this proceeding, nor are they referenced in any way in that document.

18. Originally, Wan Hai had communicated to Complainant that a Letter of Guarantee by the Shipper and the Consignee was necessary to release the cargo.

19. On June 18, 2008, the Shipper issued a Letter of Guarantee at Wan Hai’s request declaring, “THE OWNERSHIP OF THE GOODS ARE TRANSFERRED TO THE CONSIGNEE ON THIS B/L TIENSHAN INC...WE AGREE TO ALLOW TIENSHAN INC. TO PICK UP THE GOODS WITHOUT ORIGINAL B/L...”. (See Exhibit C, attached hereto).

20. On June 20, 2008, Complainant, pursuant to Wan Hai’s direction, issued a Letter of Guarantee to Wan Hai requesting it to release the cargo. (See Exhibit D, attached hereto).

21. Ms. Michelle Wang, an official of Hua Feng USA, on or about the middle of June, 2008, called Wan Hai's agent, Mr. Christian Peterson, Norton Lily Agency, demanding that Wan Hai not release the pertinent containers to Complainant on the basis that Respondent, its Chinese affiliate company, had an interest in the cargo.

22. After Ms. Wang's communication noted above, however, on or about June 24, 2008, Wan Hai's agent notified Complainant that it would not release the cargo without an additional requirement of providing a cash bond in the amount of 110% of the value of the goods, among other requirements.

23. In order to mitigate damages, Complainant sent various communications to Respondent requesting that Respondent release the original B/L immediately, including information that Complainant was subject to liquidated damages from Wal-Mart and others.

24. However, Respondent has repeatedly and obstinately insisted that Claimant should pay the full amount of the alleged debts owed by the Shipper, and has refused to provide the relevant original bill of lading.

25. In view of the above, in order to have its cargo released, Complainant has had to pay into escrow 110% of the value of the Cargo, i.e. \$47, 801.42 in Wan Hai's escrow account and also has paid demurrage in the amount of \$16,944.00, as a precondition to getting the cargo released without an original B/L.

26. In view of the fact that Respondent, by putting itself in a position to deliver Complainant's property by being the custodian of the pertinent bill of lading, then acted unlawfully by withholding the relevant original B/L for delivery.

27. Complainant, as a result of Respondent's action, has breached its contracts with Wal-Mart, and other retailers and has thereby been subjected to substantial monetary penalties because of the late or non-delivery of the goods caused solely by Respondent's unlawful withholding of the original B/L.

### **VIOLATIONS**

28. By reason of the facts alleged in the foregoing paragraphs, since neither Respondent is a party at all to the bill of lading, nor does it otherwise, nor can it claim a legitimate cargo interest, Respondent has no legal basis for holding this cargo ransom, especially with regard to an innocent party---i.e., Complainant, the U.S. importer.

29. Respondent's actions constitute violations of the Shipping Act of 1998 (the "Act"), as amended, and the corresponding shipping regulations.

30. Respondent's actions of holding cargo ransom, by obstinately refusing to turn over the original bill of lading unless Complainant paid to them the amount owed by the Shipper, constitute a violation of Section 10(d)(1) of the Act, 46 U.S.C. app. § 1709(d)(1) which requires a common carrier or an ocean transportation intermediary to maintain reasonable regulations and practices relating to or connected with receiving or delivering property.

31. Therefore, Complainant was damaged by paying demurrage to Wan Hai; by losing the use of its money by having to put up 110% of the value of the cargo to Wan Hai's escrow account; and by being subjected to substantial penalties from Wal-Mart, and other retailers, which are continuing, for damages due to late or non-delivery of the goods.

### **DAMAGES**

32. As a direct consequence of the unlawful conduct engaged in by Respondent, Complainant has suffered injury in the form of demurrage of \$16,944.00, its loss of the use funds for an indefinite period in the amount of \$47,801.42 to Wan Hai, and penalties (liquidated damages) imposed by Wal-Mart for lost sales of \$106,115.00, totaling \$170,860.42, and continuing to accrue liquidated damages.

### **PRAYER FOR RELIEF**

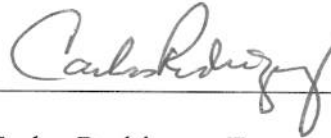
WHEREFORE, Complainant respectfully requests that the Commission issue the following relief:

1. An Order compelling Respondent to Answer the charges made herein and scheduling a hearing in Washington, D.C. during which the Commission may receive evidence in this matter;
2. An Order holding that the Respondent' activities described herein were unlawful and in violation of the Act;
3. An Order compelling Respondent to make reparations to Complainant in the amount of \$170,860.42, in addition to interest as may be lawfully permitted by law, costs, and attorneys' fees;
4. An Order to Respondent to provide Complaint the original bill of lading in order to secure release of its escrow deposit from Wan Hai, and to stop other liquidated damages from accruing; and
5. Such other and further relief as the Commission deems just and proper.

A hearing is requested in Washington, D.C.

Respectfully submitted,

By:

A handwritten signature in dark ink, appearing to read 'Carlos Rodriguez', is written over a horizontal line.

Carlos Rodriguez, Esq.

**RODRIGUEZ O'DONNEL**

**GONZALEZ & WILLIAMS, P.C.**

1211 Connecticut Ave. N.W., Suite 800,  
Washington, D.C. 20036

202-973-2999 (Telephone)

202-293-3307 (Facsimile)

Zheng Xie, Esq.

**RODRIGUEZ O'DONNEL**

**GONZALEZ & WILLIAMS, P.C.**

1211 Connecticut Ave. N.W., Suite 800,  
Washington, D.C. 20036

202-973-2981 (Telephone)

202-293-3307 (Facsimile)

**Attorneys for Complainant**

Dated in Washington, D.C. this 19th day of August, 2008.




**VERIFICATION**

Robert Sterner declares and states that he is the President of Tienshan, Inc., Complainant in this proceeding, and that the foregoing Verified Complaint is true to the best of his information and belief; and that the grounds of his belief as to all matters not upon his own personal knowledge is information which has otherwise been provided to Complainant.

I declare and state under penalty of perjury that the foregoing is true and correct.

Executed on August 20, 2008

  
\_\_\_\_\_  
Robert Sterner

State of CT, County of FAIRFIELD SS: \_\_\_\_\_, \_\_\_\_\_ being first duly sworn on oath deposes and says that he is the President of Tienshan, Inc. and is the person who signed the foregoing verification; that he has read the Complaint and that the facts stated therein, upon his own information and upon information received from others, affiant believes to be true.

Subscribed and sworn to before me, a notary public in and for the State of CT County of <sup>FAIRFIELD</sup> this 20TH day August A.D. 2008.

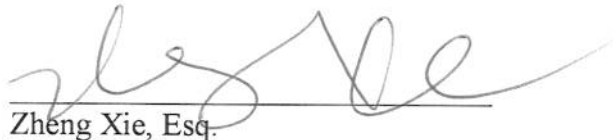
[Seal] \_\_\_\_\_

(Notary Public) 

My Commission Expires 10/31/2010

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon Respondent's legal agent for the service of judicial and administrative process, including subpoenas, Distribution-Publications, Inc., with the address of 180 Grand Avenue, Suite 430, Oakland, California 94612, by mailing a copy to such person.



Zheng Xie, Esq.

**RODRIGUEZ O'DONNELL**

**GONZALEZ & WILLIAMS, P.C.**

1211 Connecticut Ave. N.W., Suite 800,

Washington, D.C. 20036

202-973-2981 (Telephone)

202-293-3307 (Facsimile)

**Attorneys for Complainant**

Dated in Washington, D.C. this 19th day of August, 2008.

# Exhibit A



**W** WAN HAI LINES (SINGAPORE) PTE LTD.

Vessel : CMA CGM AFRICA Voyage : BH017E  
B/L No : 0138005421 S/C No : NJSD8-003E S/O No : TJJ0170006  
PLR : XINGANG, CHINA  
PLD : LONG BEACH, UNITED STATES

\*\*\* B/L Attached List \*\*\*

SHEET: 1 OF 1

&lt;&lt; Description &gt;&gt;

STONEWARE DINNER SET  
HS CODE:6911101000  
TIENSHAN  
PO#801088&80039&80096&80098&  
80100&80109&80064&80036&80042  
NO SOLID WOODEN PACKING  
MATERIAL

(TO BE CONNECTED)  
21 FEDEX TRADE NETWORKS  
19601 HAMILTON AVENUE TORRANCE  
CALIFORNIA 90502-1309  
ATTN: OCEAN IMPORTS  
PHONE: 310-353-3346  
FAX: 310-353-3216



# Exhibit B

---

**From:** Jenny [mailto:tsnocean1@thfcn.com]  
**Sent:** Thursday, June 19, 2008 5:58 AM  
**To:** Ray Lee; 'Anna Lau'; 'Hang Zheng'  
**Cc:** 'cindy'; 'sophie'; wangdong@thfcn.com; LeeDos@aol.com; dan.ling@asonic-logistics.com  
**Subject:** Re: Local Charge for c/tianshan Xingang

Dear Ray,

First of all, it is high appreciated that you help us push the payment all the time, tks for your kindly assistance. We know TienShan is a respectable company for so many years, and our cooperation is very happy all the time.

But you know, the debts is <sup>(\$35,000)</sup> RMB243,680.00 in total, it is not only this shpt but also many others. When we knew factory's funds was tight primitively, we tried our best to pay carrier first in order to get b/l in time and make cnee can pick up goods smoothly at destination. Day by day, we pay the local charge for one shpt and one again. During this period, we never make trouble for factory. We just pushed them repay the debts again and again, and they also promised to pay us many times, but it is a pity that they haven't paid us till now.

I We admit the original b/l is in our hand now. Pls note we hold the original b/l just aim at the factory(shipper) because of the outstanding payment. We book for them, we make docs for them, we pay carrier's local charge for them, but they owe us. How to protect our rights and interests? We sent shipper the formal letter today, which you can find in the attachment, but more regrettable is that shipper told WANHAI they lose the original b/l..... We will send shipper the original b/l when we get the payment.

Regards  
Jenny Zhao  
Hua Feng Transport Agency Co., Ltd. Tianjin Branch  
Ocean Department  
Tel: (86 22) 83865656 x 206  
Fax: (86 22) 83865658  
E-mail: tsnocean1@thfcn.com  
Websites: Http://www.thfcn.com

# Exhibit C



5

## LETTER OF GUARANTEE

DATE JUN 18 2008

WAN HAI LINES

WE HENAN HUATAI CERAMIC TECHNOLOGY & TRADING  
CO., LTD., SHIPPER OF THE B/L NUMBER T13017005 WITH THE  
VESSEL/VOY OF CMA CGM AFRICA BHO17E, DELARE THAT THE  
OWNERSHIP OF THE GOODS ARE TRANSFERED TO THE  
CONSIGNEE ON THIS B/L TIENSHAN INC. THEY ARE ALTOGETHER  
3339 CARTONS & 4000 KGS/221 07CBM, FOUR FORTY FEET CONTAIN-  
ERS ARE AS BELOW:

TPCU4903843;

WHLU4198764;

WHLU4152609;

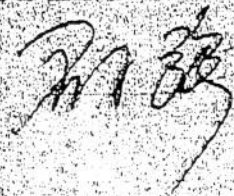
WHLU4174275.

WE AGREE TO ALLOW TIENSHAN INC TO PICK UP THE GOODS  
WITHOUT ORIGINAL B/L. WE AFFORD ANY RELATED RESULTS IF  
CAUSED.

HENAN HUATAI CERAMIC TECHNOLOGY &amp; TRADING CO., LTD.

河南华表陶瓷外贸有限公司

H&amp;S 2008 06 18 18:32 FAX



5

# Exhibit D

231 Wilson Avenue  
 South Norwalk, Connecticut 06854  
 Office: 203-866-6262  
 Fax: 203-853-1860

TO: WAN HAI LINES LTD.

JUNE 20, 2008

Dear Sirs:

Ocean vessel / Voy No.: CMA CGM AFRICA VOY# E017

Description of Cargo: STONEWARE DINNER SETS

B/L number: WHCL 0338005421

Place of receipt: LONG BEACH, CA., USA Place of delivery: LONG BEACH, CA., USA

The above cargo was shipped on the above ship by HENAN HUATAI CERAMIC TECHNOLOGY & TRADING CO., LTD - NO 46 GONGZI RD., JIAOZUO, HENAN, CHINA and consigned to TIENSHAN, INC., 231 WILSON AVENUE, SOUTH NORWALK, CT 06854, USA for delivery at the port of LONG BEACH, UNITED STATES but the bill of lading has not arrived and we, TIENSHAN, INC., hereby request you to deliver the said cargo to TIENSHAN, INC. at LONG BEACH, UNITED STATES without production of the original bill of lading. In consideration of your complying with our above request, we hereby agree as follows:

1. To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expense of whatsoever nature which you may sustain by reason of delivering the cargo in accordance with our request.
2. In the event of any proceedings being commenced against you or any of your servants or agents in connection with the delivery of the cargo as aforesaid, to provide you or them on demand with sufficient funds to defend the same.
3. If, in connection with the delivery of the cargo as aforesaid, the ship, or any other ship or property in the same or associated ownership, management or control, should be arrested or detained or should the arrest or detention thereof be threatened, or should there be any interference in the use or trading of the vessel (whether by virtue of a caveat being entered on the ship's registry or otherwise howsoever), to provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such ship or property or to remove such interference and to indemnify you in respect of any liability, loss, damage or expense caused by such arrest or detention or threatened arrest or detention or such interference, whether or not such arrest or detention or threatened arrest or detention or such interference may be justified.
4. If the place at which we have asked you to make delivery is a bulk liquid or gas terminal or facility, or another ship, lighter or barge, then delivery to such terminal, facility, ship, lighter or barge shall be deemed to be delivery to the party to whom we have requested you to make such delivery.
5. As soon as all original bills of lading for the above cargo shall have come into our possession, to deliver the same to you, or other wise to cause all original bills of lading to be delivered to you, whereupon our liability hereunder shall cease.
6. The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.

Yours faithfully  
 For and on behalf of  
 TIENSHAN, INC.

The Requestor  
 Lee dos Santos  
 Manager, Imports

Signature

NEW YORK

**TIENSHAN, INC.**

BELING

HONG KONG

231 Wilson Avenue  
 South Norwalk, CT 06854